Great Britain Trade admiralty
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A SHORT VIEW

OF THE

Lord High Admiral's Jurisdiction,

AND OF THE

SEVERAL ACTS

FOR

REGULATING AND RESTRAINING

THE

TRADE

OF THE

BRITISH PLANTATIONS.

AND

Of the COMMISSIONS of VICE-ADMIRALTY COURTS there.

TOGETHER WITH

THE HEADS OF A BILL

For the better regulating the same.

LONDON,
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BRITISH MUSEUM

A

SHORT VIEW, &c.

THERE ſeems to be no other method of arriving at perſpicuity, conſiſtency, and uniformity, as well as at a juſtifiable and ſafe proceeding, in declaring ancient powers and laws, in eſtabliſhing new ones, and in executing all, but by bringing the ſeveral written laws of the realm, which relate to the ſame ſubject, as much as poſſible, all together into one ſhort view, and by arranging them oppoſite to each other, in order to compare them with facility and preciſion.

The labour of this, as well as of ſearching into the duſt of precedents, is but too neceſſary for the public ſervice, amidſt the confuſion and contradictions of the numerous ſtatute laws of this kingdom, for a long ſeries of years, adviſed, drawn, and ſettled in haſte, upon the ſpur of occaſions, by men, although of the firſt abilities, yet often employed much more advantageouſly for themſelves and their clients, and overwhelmed with a flood of various and complicated buſineſs; or who, in the particular line of their profeſſion, have not been quite ſo converſant as was neceſſary with the ſtyle, language, nature, and conſequences of the juriſdictions and objects which were to be regulated; while perſons, on the other hand, to whom thoſe things were domeſtic and familiar, have been neglected if in obſcurity; if diſtinguiſhed, avoided or depreſſed as rivals, or over-ruled as leſs worthy to be attended to, or who have retired with diſdain, or with prudence and foreſight, from taking, at certain critical times, any voluntary ſhare in public affairs; dangerous often to the popularity and intereſts of the movers. It is, therefore, no wonder that the maſs of ſtatute laws, concerning all maritime affairs in particular, is ſo ill-drawn, obſcure, inſufficient, and contradictory; in ſhort, as if only made on purpoſe to be amended; to the ſhame and high diſadvantage of a great maritime nation.

The vice-admiralty courts in America, were firſt ſet up for the conveniency of the Americans themſelves. It cannot be doubted, but that it was done in conſequence of their own petitions, and on the ground of the diſtance of the ſupreme Court of Admiralty in England being repreſented as diſtreſſing, and even oppreſſive to Britiſh American ſubjects.

It was not until the beginning of the war of Queen Anne, that an additional juriſdiction was given to them in cauſes of prize. It took place 6 Anne, June 24, 1708. The prize-offices were then ſuppreſſed. In 1702, it was firſt attempted to ſet up the prize-juriſdiction in the vice-admiralty courts in America, and two orders of council were made upon that ſubject, December 10, 1702, and January 28, 1703. Theſe orders were not executed. But again, in 1704, a draught of a commiſſion for prize-courts in the Weſt Indies, dated 1 April, was ſent to Sir Charles Hedges; this however did not paſs under ſeal. At the time of the firſt attempts to extend the juriſdiction of the vice-admiralty courts of America in 1702, Sir Charles Hedges, who had been an advocate at Doctors Commons, was not only judge of the High Court of Admiralty of England, but in the ſame poſt as one of his predeceſſors in both offices, Sir Lionel Jenkins; he was ſecretary of ſtate. It is not to be wondered that he ſhould oppoſe this new arrangement with ſucceſs, for a time at leaſt; or that he ſhould oppoſe it at all; well knowing how irregular, abſurd, voluminous, expenſive, and ill adapted to *the nature of the buſineſs*, muſt neceſſarily be the proceedings of ſuch courts, if they ſhould imitate proceedings of common law and chancery, as they have ſince imitated them, and if they ſhould not purſue the courſe of the civil law maritime, in a ſummary way, which they are directed by their commiſſions *in vain* to follow; a courſe known and practiſed by all other European ſtates. Not to ſay how partial, and it is to be feared ſometimes corrupt, theſe ſecond (and now third) rate courts might be, conſidering the people theſe courts are often compoſed of, and with whom they live; above all, he well conceived the abſurdity and miſchiefs of the want of uniformity of deciſions in a variety of juriſdictions.

It is poſſible too, he thought that the ſetting up and extending thoſe juriſdictions, ſo far from home, was giving too much weight, and a firſt-moving power to American influence; and that the letting go the operation of domeſtic authority

thority in the firſt inſtance, which ought to be well underſtood, and jealouſly preſerved, might in the long-run of human affairs, eſſentially weaken, inſtead of aiding, the mother-country; and that it might only ſerve, in concurrence with other circumſtances, to give a head to the tail of the ſnake, with ſtrength to aſſume form and motion, and a ſting to wound.

If his Majeſty's government at this criſis were to yield to the outcry of the deluded Americans againſt the vice-admiralty courts, and to ſuppreſs them all, it would be a real grievance to no perſons but to the Americans themſelves. However, as matters now ſtand, it may be adviſeable to regulate, in view of ſome ſort of calm, that part of the ſyſtem which may not be touched hereafter ſo ſafely as now; to provide, in the midſt of this ſtorm of anarchy, for the inſtant neceſſity; and to ſettle a juriſdiction to be reſorted to immediately by the captors: without which, in caſes of capture, all reſtraining and regulating laws, would be only bluſtering and fulminating words, without any executive power. The ridicule which they would draw for want of it, would be but an additional weakening of all conſtitutional authority.

To carry a great fleet of captured ſhips into the ports of a revolted or revolting continent, or into thoſe places which may ſooner or later be ſurpriſed, or taken, or infected with the tumults, and before judges whoſe lives are not ſafe, even ſuppoſing their loyalty, purity, and courage to be unimpeached, and that they have not the leaſt fear, or biaſs of intereſt, or family or trading connections, is a proceeding which wants no comment on its danger: yet, as the law now ſtands, under the preſent commiſſions for vice-admiralty courts in America, to ſuch places, muſt almoſt all captures be carried, for a breach of the reſtraining and regulating laws of trade and navigation. This conſideration makes, as it is conceived with great ſubmiſſion, the propoſed clauſe, ſect. 8, to be of abſolute neceſſity.

There is another circumſtance which ſeems to demand immediate relief to a body of men, who deſerve every thing from their country. The diſtreſs of the commanders and officers of his Majeſty's navy, between the obedience on the one hand due to the king's orders to make ſeizures of ſhips, both Britiſh and foreign, under certain ſuppoſed circumſtances of contraband, or non-obſervance of regulations; and the

difficulty

difficulty on the other hand of diſpoſing and obtaining condemnation of ſuch veſſels and cargoes, the ſubjection to damages, and demurrage, for any illegal and erroneous ſeizures, together with the uncertainty upon what ground of law they ſtand, theſe are all conſiderations which naturally would make the officers of any other country leſs loyal, brave, and diſtinguiſhed than themſelves, rather remiſs in executing the ſervices they are commanded upon. Worſe men would ſee no other way to eſcape their difficulties, but by turning them to their immediate advantage, by colluding with the captured, or ranſoming every thing. If ever the Atlantic ſhould ſee ſwarms of privateers of American rebels, ſome of the king's ſmaller ſhips may happen to be taken, or the larger may be drove aſhore in gales of wind; it would be more likely that all theſe ſhould be condemned by courts of admiralty in America, once ſet up, adopted into a form of government by the new modellers there (for even pirates aſſume the form of juſtice), than that in ſuch a country condemnation ſhould be procured of ſhips and cargoes taken by his Majeſty's cruiſers, for the intereſt of his Majeſty, of the governors, and of the captors.

Having named pirates, it deſerves to be noticed, that by a long ſeries of office-blunders through ſeveral reigns, in copying one commiſſion from another, for the trial of pirates in the colonies, and elſewhere, there is not one commiſſion now exiſting, which is of a tenor correſpondent with the ſeveral acts of parliament, except the two laſt commiſſions for trying pirates at Grenada, the Grenadines, St. Vincent and Tobago, and at Dominica; which with great care were compared, ſettled, and paſſed the great ſeal of the High Court of Admiralty, in the year 1772, in the terms of the ſeveral acts of parliament in force reſpecting the trials for piracy. It is ſubmitted, that new commiſſions, ſtrictly agreeable to the tenor of the acts, ought immediately to iſſue by order of council.

To load the privy-council any oftener than may be neceſſary with the deciſion of a great number of perplexing cauſes of captured ſhips, for breaches of the regulating and reſtraining acts of trade; to lower that board down to the buſineſs of a board of the revenue, like commiſſioners of the exciſe or cuſtoms, is a thing which can hardly be very deſirable to the great officers of ſtate, occupied as they are, and other noble perſons who compoſe that aſſembly, who cannot be attended and aſſiſted

aſſiſted ſo often as may be neceſſary by the judges of the common law courts, who may happen to be members of the council, but are employed elſewhere indiſpenſably during their terms and ſittings. The expence of the ſuitors there is enormous, which none but the mere man of law can wiſh or approve. There is beſides an invidiouſneſs which attends the deciſions of ſuch a board. An idea ill founded, but common in the minds of both foreigners and ſubjects, that at a board which muſt include all the King's miniſters for the time being, there may be an eſprit du corps, a ſort of equity, which may regard the whole more than a part, and that the political needle may point differently in different degrees of latitude. A perſonal odium is eaſily avoided, if cauſes are left to their natural and conſtitutional courſe. There is the leſs occaſion *now* for ſuperſeding a juriſdiction (of which more will be ſaid in another place) in the exerciſe of which a judge preſides, whoſe integrity is undoubted, whoſe capacity is acknowledged, whoſe experience is great, and who, if called up in his place, like his predeceſſors, to the higheſt board, would be able to give, in the line of his profeſſion, ſuch advice as would be uſeful to his Sovereign, and honourable to himſelf and country.

On the whole, it is to be hoped that the plan of the propoſed bill, is ſo reaſonable and neceſſary in itſelf, ſo conſiſtent with the conſtitution of this country, and ſo favourable to the ſubject who may ſeek for reſtitution, that it ought not to be objectionable even to any ſet of men, who may hope to have, one day or other, their turn in the adminiſtration of government. It may even be uſeful to thoſe very perſons who, in the opinions of many, have acted, rather on the principles of the enraged female deity, jealous of the ſuppoſed favourites of the great Jupiter,

Flectere ſi nequeo ſuperos, Acheronta movebo,

who, if they ſhould at laſt obtain their wiſhes, in the poſſible revolutions of all human affairs, to guide a battered ſhip in the midſt of their own ſtorm, may at laſt fatally find the truth of this political axiom, *that it is more difficult to pleaſe and act perfectly well with new friends, than to perplex and even to ſubdue old enemies.*

Theſe are the ſentiments of Cardinal de Retz, which may be recommended to their conſideration. Nobody underſtood the

the game of faction or the humour of a mob better; which he raiſed, but did not always quell at pleaſure. This want of a power of laying, in ancient tales of romantic and ſuperſtitiouſly believing ages, is ſaid to have been the great difficulty, and always to have ended in the final deſtruction of thoſe magicians, who, with the waving of a wand, and words muttered backwards *(not in their true meaning)* called up ſpirits from the deep. What a triumph! to ride upon the whirlwind, and lay waſte once great and flouriſhing provinces! What a monument of glory! to ſhake a world, to rend its hemiſpheres aſunder, and then—to be buried in the ruins!

It is right to addreſs every man in his own ſtyle; but there are men of buſineſs who ſet no value upon rhetorical figures, but wiſhing to be informed truly, rather than to miſlead others, chuſe to have a ſubject ſtated in a plain manner.

In taking a ſhort view of the acts of trade, the firſt to be conſidered is the

ACT *called the* NAVIGATION ACT,

12 Charles II. c. xviii.

No goods ſhall be imported from the plantations in Aſia, Africa, or America, but in Engliſh, Iriſh, or Welſh ſhips, or belonging to the town of Berwick upon Tweed. Forfeiture, one-third to the king; one-third to the *governor, where default is committed* or *otherwiſe* that *third* to the king; the other to the ſeizor, informant, and ſuitor.

OBS. Scotch and Plantation built ſhips are not named.

Juriſdiction for penalties and forfeitures.

In any court of record (any where) *by bill, information, plaint, or action, without eſſoin, protection, or wager of law.*

All admirals and commiſſioned officers at ſea, authoriſed and required to ſeize as prize, all veſſels offending, to deliver to the Court of Admiralty for condemnation. One moiety to the ſeizor; one moiety to the king.

15 Charles II. c. vii. ſect. 6.

Recapitulates the 12 Charles II. that no goods ſhall be imported but in *Engliſh built* ſhipping, three-fourths of the mariners

mariners Engliſh; forfeitures to the king, governor, and ſeizor; but no notice of admirals and commanders.

Obs. *Iriſh, Welſh, and Scotch, and Plantation built ſhips are omitted.*

Forfeitures in thirds, to be recovered in any of the king's courts in the colonies, or court of record in England. No notice of the High Court of Admiralty, nor of admirals and commanders, and their half ſhares.

22 and 23 Charles II. c. xxvi.

Bonds to be taken by governors of plantations, and ſhips which ſhall carry commodities enumerated to other places than agreeable to the tenor of the bonds, ſhall be forfeited ſhip and goods: one moiety to the king; one moiety to the ſeizor.

Suit to be in any of the Plantations; in the court of the High Admiral of England; or of any of his vice-admirals; or in any court of record in England.

7 and 8 William III. Sect. 2.

Goods not to be carried but in ſhips of the built of England, or of Ireland, or of the plantations, wholly owned by the people thereof, and navigated by Engliſh three-fourths.

Obs. *Although Plantation built ſhips are named here, which were omitted* 12 *Charles II. Welſh and Scotch are here omitted.*

Forfeiture in thirds, recoverable by the informant and ſuitor by bill, plaint, or information (nothing about eſſoin, protection, or wager of law), *to be brought in any courts of record at Weſtminſter, or in any court in the plantations.*

Ships coming from or going to the Plantations liable to all the rules and cuſtoms, as in 14 Charles II. c xi. concerning penalties of wharfingers; frauds in the cuſtoms.

Sect. 3. *All penalties in this act* before mentioned, *not in this act* particularly diſpoſed of, *are one third to the king; third to the governor; third to the informant and ſuitor: recoverable in any of*

his majeſty's courts of Weſtminſter, or in the kingdom of Ireland, or Court *of* Admiralty *held in his majeſty's Plantations reſpectively.*

Obs. *No notice is taken of admirals and commanders, and their half ſhare, nor of the High Court of Admiralty of England.*

Sect. 11. *In actions, ſuits, and informations in the Plantations concerning duties and forfeitures, there ſhall not be any jury but of natives of England and Ireland.*

Obs. This ſeems by implication to eſtabliſh a jury, even in the Admiralty Court in the Plantations, in caſes of duties and forfeitures.

By the Act of Union Scotch built ſhips are to be conſidered as Britiſh built ſhips. 5 *Anné, c.* viii. *article* 5.

6 George II. c. xiii.

Duties upon rum and ſpirits made in America imported into the colonies.

Forfeiture in caſe of landing without certificate; one-third to the king, to be applied to the public uſe of the colony; third to governor; third to proſecutor. To be recovered in any court of Admiralty, or in any court of record, where ſuch offence is committed.

12 George II. c. xxx.

Relating only *to ſugars,* taking in foreign goods, frauds, &c.

Penalty or frauds in ſhipping ſugars, owner to forfeit double value, recoverable in the court of Vice-admiralty in any *of his* majeſty's *plantations in America, or* any court *of record* there, *at the election of the informant.*

Penalties and forfeitures, except where it is hereby otherwiſe provided, may be proſecuted in any court of record at Weſtminſter, or the court of Exchequer in Scotland; no eſſoin, &c. and only one imparlance.

4 George III. c. xv.

All forfeitures and penalties incurred by that, or any other act relating to trade and revenues in the colonies, ſhall be proſecuted and recovered

covered in any court of Admiralty in the Plantations where the offence ſhall be committed, *or in any court of vice-admiralty to be appointed over all America.*

8 George III. c. xxii. Nov. 24, 1767.

Whereas proſecutions in one court only of vice-admiralty over all America, may in many caſes, by reaſon of the diſtance of the places where the cauſe of ſuits ſhall ariſe, from the place where the court is eſtabliſhed, be attended with great inconvenience, it is enacted, that all forfeitures and penalties relating to trade and the revenues in the colonies, may *be ſued for in any court of vice-admiralty appointed, or to be appointed, and which ſhall have juriſdiction within the colony, plantation, or place, where the cauſe of ſuit ſhall have ariſen.*

Appeals to lie from any court of admiralty in the reſpective colony where the offence ſhall be committed, to any court of vice-admiralty, appointed or to be appointed, which ſhall have juriſdiction within ſuch colony, viz. Juriſdiction of Appeals, *as well as an original juriſdiction.*

The reſtraining acts of the laſt ſeſſion of parliament have in them a clauſe, *in imitation of preceding acts,* whereby it is made lawful for any admiral, chief commander, or commiſſioned officer of his majeſty's cuſtoms, to ſeize any ſhip or veſſel having ſuch goods (as enumerated on board), for which the maſter ſhall not produce a cocquet. This clauſe puts the cart before the horſe, for if the maſter ſhall not have ſuch goods on board, he is not liable to be ſeized; therefore, the officer ſeizes at his peril, and is liable to an action of treſpaſs, demurrage, &c. for ſeizing, in a caſe when he ſhall find after all that there are no ſuch goods on board; and if in any ſuch attempt to ſeize there ſhould be reſiſtance, ſuch reſiſtance may be held lawful, as it was in the caſe of Deaſon, and others, tried at the Old Bailey in 1774, before Sir George Hay, Mr. Baron Perrot, and Sir Richard Aſton, for being parties in reſiſting a king's cutter, and in the death of a cuſtom-houſe officer, off the Iſles of Scilly, in his attempt to board a ſhip ſuppoſed to have uncertified goods aboard, and hovering; neither of which circumſtances were proved, ſo that there being no lawful grounds of ſeizure, the man was acquitted. A few words would eaſily make *ſearching* lawful, which ſhould *precede* the ſeizing. Vide propoſed Emendation, ſect. 17.

THE COMMISSIONS *granted for vice-admiralty courts in the Colonies, as they appear by the regiſter books in the Admiralty Office are the following.*

Charles II. 1677, 27th Feb.

Commiſſion to James duke of York, to be lord high admiral of Dunkirk, New England, Jamaica, Virginia, Barbadoes, St. Chriſtopher's, Bermudas, Antego, Guinea, Binny, Angola, and Tangier, and all other the king's dominions beyond the ſeas, with powers to make locum tenents, officials, commiſſaries, vice-admirals, and deputies.

No commiſſions appear to have been granted of vice-admirals, or judges of vice-admiralty courts, in the colonies under this reign or the next.

The firſt commiſſions for vice admirals, and judges of vice-admiralties in America, appear to have been in the time of William and Mary.

4 George III. Oct. 12, 1764.

Commiſſion iſſued for erecting one court of vice-admiralty over all America, with concurrent juriſdiction. Appeal to be to the High Court of Admiralty of Great Britain.

OBS. *In this commiſſion no notice was taken of any farther appeal to the king in his high court of delegates. The judge ſcarcely heard a ſingle cauſe in the four years; it was ſo inconveniently ſituated in point of diſtance from all the other vice-admiralty courts.*

This commiſſion was accordingly revoked, Oct. 12, 1768, 8 George III. And 17th Oct. following, were granted four commiſſions.

A commiſſion granted to Jonathan Sewal, eſtabliſhing a court of vice-admiralty at HALIFAX to have *original* juriſdiction in all cauſes ariſing within the limits of *Quebec, Newfoundland, Nova Scotia,* and within three leagues of the ſhores thereof, and in all cauſes ariſing from the capture of ſhips to the northward *of the latitude of forty-three degrees, fifteen minutes north, or of ſhips whoſe port of deſtination ſhall be within either of the ſaid colonies, with juriſdiction in appeals* from the vice-admiralty courts eſtabliſhed,

bliſhed, or to be eſtabliſhed within either of the ſaid colonies. Saving a right to the parties aggrieved by this court, in the firſt inſtance *upon appeal*, to appeal to his majeſty in council, *or optionally* to the high court of Admiralty of England. Commiſſion during pleaſure.

Commiſſion of ſame date, to Robert Auchmutty, eſtabliſhing a court of vice-admiralty at BOSTON, in North America, to have original juriſdiction in all cauſes ariſing within the limits of New Hampſhire, Maſſachuſets-Bay, Rhode Iſland, and Connecticut, and within three leagues of the ſhores thereof, and in captures of ſhips *between the latitudes of forty degrees, thirty minutes, and forty-four degrees, thirty minutes north, or of ſhips whoſe port of deſtination ſhall be within either of the ſaid colonies*, with juriſdiction of appeal from the courts of vice-admiralty in the ſaid colonies; during pleaſure. Appeal from the court of Boſton, to king and council, *or* high court of Admiralty of England.

Commiſſion of ſame date, to Jared Ingerſol, eſtabliſhing a vice-admiralty court at PHILADELPHIA, with original juriſdiction in New York, New Jerſey, Penſylvania, the lower counties on Delaware, Maryland, and Virginia, and within three leagues of the ſhore; and in all cauſes of capture of ſhips *between the latitudes of forty-one degrees and thirty-ſix degrees, fifteen minutes north*, or of ſhips whoſe port of deſtination ſhall be within either of our ſaid colonies, with juriſdiction of appeals from the courts of vice-admiralty within either of the ſaid colonies. Appeals from hence to king in council, *or* high court of Admiralty of England; during pleaſure.

Commiſſion of ſame date, to Auguſtus Johnſton, eſtabliſhing a court of vice-admiralty at CHARLES-TOWN, to have original juriſdiction in North Carolina, South Carolina, Georgia, Eaſt Florida, and Weſt Florida, and within three leagues of the ſhore, and in captures of ſhips *to the ſouthward of latitude of thirty-ſix degrees, forty-five minutes north*; or of ſhips whoſe port of deſtination ſhall be within any of the ſaid colonies; with juriſdiction of appeals from any courts of vice-admiralty in the ſaid colonies. Appeals from thence to king in council, *or* high court of admiralty of England; during pleaſure.

There is a difference now between the courſe of appeal from theſe four courts of the American continent, and the courſe of appeal

appeal from the iſlands. From all the vice-admiralty courts of the American iſlands, the appeal lies not to the king in council, and to the high court of Admiralty *optionally*, but to the high court of Admiralty; becauſe in all the commiſſions for vice-admiralty courts in America, preceding the four laſt mentioned, the juriſdiction and prerogative of the high court of Admiralty of England was ſaved by eſpecial words; and rightly, becauſe that juriſdiction is founded on the ancient common law and uſage of the realm. It is coeval at leaſt with the Exchequer: its book more ancient, and it is certainly of an earlier date and more fixed authority than ſome of the other common law courts. The appeal lay from all the vice-admirals, and their judges-lieutenant throughout all the dominions of the crown, to the lord high admiral and his lieutenant-judge, and then to the king and his delegates, and no where elſe.

It is obſervable, that the *ſtatute* of the eighth of his preſent Majeſty gives no power to the crown to appoint commiſſioners ſuperſeding or concurrent with the high court of Admiralty, though the four commiſſions, *proprio vigore*, and *of themſelves*, do grant ſuch a juriſdiction. The act only gives juriſdiction of appeals to four new courts in the colonies, and there the act ſtops. Now, that no court of appeals in the laſt reſort can be ſet up without an act of parliament is proved by this fact, that the committee of privy-council for hearing cauſes of appeal concerning prizes during the war, did derive their juriſdiction under an act of parliament, which act was the foundation for the royal commiſſion directly, as it was in the revoked commiſſion of the vice-admiralty courts over all America; and the high court of Admiralty was the uſual courſe of appeal in all, until theſe four new commiſſions were ſet up.

Some doubt therefore poſſibly may ariſe upon the legality of having given to a committee of the privy-council, by virtue of commiſſions, altering the regular courſe of law, without an act of parliament, a juriſdiction concurrent with the juriſdiction of the high court of Admiralty.

Laſtly, the vice-admiralty courts in America are the only courts having *original* juriſdiction in the firſt inſtance, or of appeal in the ſecond. The conſequence is clear, that whenever they cannot act, *from a ſtate of anarchy in the Colonies*, neither the privy-council, nor high court of Admiralty,

ralty, can legally take up cauſes in the firſt inſtance, which they can only hear by way of appeal in the ſecond or third inſtances.

In time of war the judge of the high court of Admiralty can only try prize cauſes, in the firſt inſtance, by virtue of a ſpecial act of parliament for that purpoſe; and not till then has he any juriſdiction relative to this buſineſs, but what he derives from the king in parliament, and not from the lord admiral or commiſſioners repreſenting him.

Farther; agreeably to the principle of the act of the twenty-ſecond of his late majeſty, none of the common law judges can ſit in the privy-council, unleſs they are privy-counſellors, in any cauſes whatſoever appealed from courts in the colonies.

There is, it is ſaid, a diſpoſition in perſons of ſome weight, to queſtion the legality of the juriſdiction of the privy-council in any civil cauſes in the colonies whatſoever, and to inſiſt, that although the appeal lies to the king, it lies to him only in the perſons of his judges in his courts in Weſtminſter-hall. The common lawyers only can determine upon what grounds ſuch an attempt can poſſibly be ſupported; but ſo far as the civil law maritime and foreign is concerned, it does not ſeem a light thing by any act of parliament, or by any ſtrained interpretation of law-policy put upon any act of parliament, or by any commiſſion without one, to ſuperſede the authority of the lord high admiral and his lieutenant.

The perſons who adviſed and drew the four commiſſions of the vice-admiralty courts in America already ſtated, did not ſeem to conceive (beſide the want of an act of parliament to give force to a commiſſion of council on ſuch appeals) the impropriety which is apparent, that cauſes, which are to be heard in the inferior court of the ſubſtitute, ſhould, in going up to any other court by way of appeal, paſs over the head of the paramount juriſdiction, from whence they, the inferior courts, derived their authority in ſubſtitution. Indeed, the confuſion of all the patents of the vice-admirals, and their judges, in every part of his majeſty's dominions, at this time demands attention; and the concurrency of their powers, ſome incapable of execution, or incompatible and inconſiſtent with one another, defeats itſelf, and amounts almoſt to a ridicule, worthy only of the iſland of Barataria.

It deſerves, however, ſtrongly to be noticed, that the juriſdiction of the lord high admiral is one of thoſe great branches of the regal prerogative, which deſerved moſt to be cheriſhed, becauſe conſtituted and exerciſed for the good of the ſubject, and for the preſervation of the realm upon ſudden, dangerous, and violent emergencies, over a peculiar body of men whoſe manners, lives, and occupations are as violent as their element, and over objects in their own nature not in the leaſt ſuited to the ſyſtem of the domeſtic and peaceable laws for what is done upon the land; ſo that every attempt to leſſen that juriſdiction has been attended, at all times, with apparent prejudice to the great intereſts of the nation at large, as a maritime and commercial people. In ſuch a caſe all conſiderations of public party or intereſts of a few retailers of low practice ſhould give way.

The hiſtory of the laws of England, is the hiſtory of great political expediencies, of the change of manners, property, and power. It will be found, that the greateſt injuries done to the maritime juriſdiction, were done in times when all legal authority was ſecretly ſapped, or moſt openly attacked by deſigning or violent men. The ſame factious barons who carried the the judges off their ſeats from the king's courts to priſon, or to the place of execution, were the firſt who reſtrained the juriſdiction of the lord high admiral and his vice-admirals, by the act of the thirteenth of Richard the Second; and it appears, notwithſtanding, upon the records, that it was not till ſixty-two years afterwards any prohibition was granted by the common law courts againſt the authority of the lord admiral. They then firſt began to cruize upon it, by ſtrained interpretations of their own upon the ſtatute. It appears too, that theſe prohibitions in favour of their own power have no precedent beyond their own walls; no caſe upon it, or writ of error having ever been brought before the Houſe of Lords, to correct the reformers, and ſettle the contending juriſdictions by a laſting precedent.

Few men have been thought more ſincere friends to all the liberties of the ſubject than the late judge Forſter. He juſtly conſidered thoſe limitations which have now happily become parts of the Britiſh conſtitution, and which reſtrain the power of the crown in ſome inſtances, as reſembling maſſy columns round ſome magnificent and royal edifice; which, at the ſame time that they are its boundaries, are both its guard and

ſupport;

ſupport; but he well knew the neceſſity of leaving particular weights of the ſovereign prerogative unconfined.

The powers of the lord high admiral, as ancient as royalty itſelf, from whence they flowed, and owing their ſource to the ſame principle, the good and preſervation of the whole people, were not, in his idea of liberty and civil policy, to be narrowed into too ſmall a channel.

If royalty has its limits, liberty has its reſtraints. Something of natural freedom is given up by every human being entering into aſſociation and compact, voluntarily or neceſſarily, for mutual defence and comfort. In every machine there muſt be one great predominant power reſiding ſomewhere.

The central point, formed by the radii of a circle, which are themſelves but ſo many points repeated, as it is acted upon by, muſt re-act with, the proportional force of the whole, to ſupport the contents of the circumference. It is in this concentration of combined forces reſides in every ſtate, howſoever modelled in its outward form, a deſpotiſm, or if we uſe the language of the Roman popular government, the collected majeſty of the people. The authority of a dictator, of a protector, of a commander in chief, or a royal prerogative, exiſts ſome where, and upon ſuch occaſions as are of violent nature ſuch an authority muſt be reſorted to and operate, otherwiſe aſſociation and government, which are the ſame thing, muſt be diſſolved.

The right of the crown exerciſed in the perſon of the lord high admiral of England, by his warrants, was unanſwerably ſupported by the before mentioned judge in a charge, which has been printed, delivered on the occaſion of a perſon being tried for the death of a ſeaman in an attempt to impreſs him. Yet modern republicaniſm has endeavoured to give, among other ſtrokes, one more to the vitals of this kingdom; to unman the Britiſh navy, by reſiſting the warrants of the Admiralty for the impreſſing ſeamen, in the place of their greateſt reſort, the heart of the capital. In the colonies, the impreſſing ſeamen has long been rendered impoſſible. A name is wanted to this effort, in conſequence of great ignorance of the laws, and of an oppoſition moſt unconſtitutional upon theſe grounds.

The ſame ſpirit agitated in former ages the ſame ſort of beings. The very man, lord Coke, became, when it better ſuited his views, the general oppoſer of prerogative, who, when a ſervant of the crown, deſirous to pay his court to the aſcendancy of a Spaniſh miniſter, called one of the braveſt, and beſt officers of this country, although an honour as a ſubject, and as a man, to the age he lived in, upon his trial, by the vileſt names foul language could ſupply. Lord Coke attacked the juriſdiction of the lord high admiral with the ſame violence and malignity as he did that of the court of Chancery. What he wrote concerning the latter, is but a part of the hiſtory of the perſonal hatred which he bore to lord chancellor Elſmere.

The juriſdiction of the chancellor and the admiral, ſeem to have had a cloſe connection; for, it appears, that, in certain circumſtances, anciently the lord admiral uſed to certify under his ſeal into Chancery, to the king and his chancellor, and ſo his certificates became, if not originally of record, yet ultimately and conſequentially, *as it were*, of record. It muſt be ſuppoſed, of courſe, that he obtained the aid of the chancellor in the ſame manner as the eccleſiaſtical judges do at this day upon their certificates, and as the vice-chancellors of the two univerſities formerly did obtain it in ſupport of their juriſdictions.

The inconveniences reſulting from the ſentences of the high court of Admiralty, not being of record nor of evidence themſelves, and matters being liable to be tried over again at another bar, are pointed out and obviated in ſect. 3. of the propoſed bill.

The reaſon given by lord Coke that the courts of Admiralty are not of record, is as ridiculous as his reaſon that lands cannot aſcend, becauſe they are heavy; he ſays theſe courts are not of record, becauſe they only ſet forth the law of the ſea, and that, he ſays, is not the law of the land: certainly water is not earth; it might be anſwered, but the law of the ſea is inſeparably the law of the realm. Well might a noble deſcendant of this man ſay, that he was informed that his anceſtor had wrote the greateſt law-book in the world, but that upon reading it he found it a jeſt-book. Yet the juſtice muſt be done him to ſay, that *long before his time* ſuch ſort of reaſonings had been adopted by courts which might naturally have been

been expected to have guarded *ex officio* the king's prerogative, inſtead of ſuffering prohibitions to go indiſcriminately, whenever they were not oppoſed.

The fictions of a ſhip being found in the middle of Cheapſide, in order to ground the conuſance of the common law in marine buſineſſes, the inſiſting that a ſeal altered the nature of contract for a ſeaman's wages, and that theſe were juſt reaſons to refuſe to a locomotive body of men a quick and comprehenſive mode of proceſs in the Admiralty court, which mode was more favourable to their rights and liberties, and the poſſibility of maintaining them, than any other ſort of proceſs at common law, leſs adapted to their manner of life and ſubjects of complaint, and more favourable to the oppreſſions of owners of ſhips and cargoes: all theſe innovations upon the juriſdiction of the Lord Admiral, in the perſons of his lieutenant-judges, were weeds that grew up very early in our conſtitution, from the ſame ſoil and ſowings of republican humour which followed the ariſtocratical tyranny of the barons, whoſe liberty was not the liberty of the people. The truth is, the juriſdiction of the king and the admiral interfered with the plunderings of wrecks, and the oppreſſive rights exerciſed by the barons, as lords of manors.

The flagrant inconveniencies which ariſe from the depriving ſeamen of ſuing optionally in any courts they pleaſe for their wages, merits at this day a new law, and that the legiſlature ſhould go back in this inſtance to old principles. The law of wrecks, as it now ſtands, is in its conſequences a diſhonour to to human nature.

It is painful to obſerve that our law-books are full of ſuch fictions and reaſonings as the above; they have diſguſted many men of liberal minds, and who have delighted in the truth of ſolid argument, from the ſtudy of our laws, and of courſe of our conſtitution. Theſe books in conſequence have been conſidered as the worſt written compoſitions in the world; and an impreſſion has been given that many deciſions, now grown ſanctified by antiquity, having been founded in appearance, upon ſuch attempts at wit, falſe reaſonings, quibbles, or refinements, have in reality been intended only to anſwer ſome little private end, or ſome political purpoſe of the day, rather than to purſue the great lines of univerſal juſtice and public utility.

Narrowneſs of mind, ignorance of a liberal and neceſſary ſyſtem, or ſelf-intereſt or republicaniſm, blinded at different periods of our hiſtory the eyes of men, who ought to have judged better both for juſtice and policy. So wild were even the reformers of our laws at one time, that thoſe who in many things very happily reformed religion, thought every thing muſt be reformed that had the leaſt kindred to the canon laws. The civil law maritime, although all its cuſtoms were not foreign, was to be reformed too, and ſo much the more were they diſpoſed to reform it, in order to appear able themſelves, becauſe they knew little of it. The ſtatute of Henry VIII. was made on a ſuppoſition, that the admiralty juriſdiction of England uſed torture, required confeſſion of the accuſed party, and never admitted juries. It does not appear by all the Admiralty records, that it ever uſed torture, or required confeſſion; and as to juries, it appears by the ancient rules, and of the higheſt authority, that every kind of treſpaſs, miſdemeanor, aſſault, wounding, maihem, homicide, and every crime which could affect life or limb, were always triable by the oaths of twelve men before the admiral or his deputies. There was a jury of twenty-four men, merchants and mariners, to find every indictment, and of twelve to try it and give a verdict. So little has pſeudo-patriotiſm in all ages to do with truth, and ſo ill does ignorance or vanity reform and limit that which were better left untouched or at large for the happineſs of mankind.

The whole of this detail has been unavoidable, to ſhew the neceſſity of the following propoſitions, and for underſtanding the nature of the maritime juriſdiction. But nothing here ſaid is intended, or can be underſtood, to animadvert in the leaſt upon the conduct of thoſe great men, who in the common law courts reflect honour upon, rather than receive it from their high ſituations in office. They have done nothing but follow, as it was their duty, the path of precedents marked out and worn bare by their leſs moderate and more prejudiced anteceſſors. It is well known the genius of the law of England leans upon precedents. Precedents make the law. That is law which is the uſage of the land; and the perſonal ſafety of the judge is ſecured by the reſtraint which thoſe precedents put upon him in announcing the law. So that it is held wiſer for him, and better for a free nation, that a bad precedent ſhould be followed, becauſe it is a known one, and univerſally of long time ſubmitted to, than that a new one, although poſſibly better,

better, ſhould be made upon the diſcretion of a few fallible men, which ſhould alter the courſe of juſtice, and leave every thing in an uncertainty of rights and proceedings, than which uncertainty nothing can be a greater misfortune to a free people, or more likely to deſtroy their liberties.

How much ſoever a Code of maritime laws (of which our neighbours the French have an admirable one) may have been long wanting in ſo great a commercial nation as our own; yet until the legiſlature ſhall interfere to colle ct intoone compact ſyſtem the ſcattered and confuſed parts of the ancient juriſdiction of the Admiralty, and adapt both old and new laws to preſent exigencies, things muſt and will remain as they are. An exigency has now ariſen which in ſome particulars calls aloud for immediate regulations; better propoſitions very poſſibly may be thought of than thoſe which follow: and a total annihilation of the vice-admiralty courts in America, and ſome regulation for the juriſdiction at home, might be the ſhorteſt and beſt method of proceeding. Government then would oblige the ſtubborn Americans in their own way, and puſh the aſs, running back, down a precipice.

HEADS

HEADS of a BILL

FOR

The better Regulation of Law Proceedings in Cauſes of Seizure of Ships and Goods, to be tried in the Britiſh Colonies and Plantations, and elſewhere in his Majeſty's Dominions; and for amending an Act of the 4th of his preſent Majeſty, and other Acts relating to the ſame.

WHEREAS the vice-admiralty courts in America were ſet up at the firſt for the greater eaſe and convenience of the Britiſh American ſubjects, and there is reaſon to hope, that the preſent general obſtruction to the courſe of juſtice, in the Britiſh colonies and plantations in America, will not long continue; and whereas the ſeveral acts of parliament now in force touching the ſeizure of ſhips and goods, and the forfeitures thereof, for diſobedience of the laws concerning the trade and navigation of his majeſty's ſubjects are defective, in not ſufficiently marking out the neceſſary modes and rules of proceſs for the legal condemnation of ſuch ſhips and goods; and whereas it is experienced that there is not a ſufficient power in the judges of the admiralty courts in his majeſty's colonies and plantations to compel the maſters and mariners of ſhips, and other perſons, to appear and give evidence, who frequently have withdrawn themſelves, or openly refuſed to obey any writ, monition, or compulſory iſſued from ſuch courts; and that his majeſty's governors and commanders, and officers of the army and navy, in the ſaid colonies and plantations, have not authority in law to be aiding and aſſiſting to the judges of the ſaid courts in the exerciſe of their duty and juriſdiction:

SECTION I.

Be it enacted, for the more effectually removing, if poſſible, all ſuch obſtruction to the courſe of public juſtice, and for preventing the diſorders which may encreaſe within the ſaid colonies by an oppoſition to the ſeveral acts of parliament regulating and reſtraining the trade and navigation of his majeſty's ſubjects in the ſaid colonies and plantations, that it ſhall and may be lawful for the governors, deputy-governors, commanders, officers of his majeſty's army and navy, or cuſtoms, or revenue,

revenue, officers of juſtice and the peace, and all other perſons whoſoever, to be aiding and aſſiſting to the judges of the courts of admiralty, and to all other his majeſty's judges of any courts of record in the Britiſh colonies and plantations in America, in ſerving and executing any writ, warrant, monition, or compulſory, interlocutory order, decree, or ſentence, arreſt, or attachment iſſued concerning ſhips, veſſels, goods, or perſons, within the ſaid colonies or plantations, being thereto required by any judge or officer of the court directed to ſerve or execute the ſame: and in caſe of refuſal, to forfeit the ſum of five hundred pounds, to be recovered by action of debt, or by other proceſs, in his majeſty's name, in the ſame manner as the penalty in the caſe of colluſive ſeizure herein after mentioned is to be recovered. Such forfeiture to be applied to the public ſervice of the ſaid colony or plantation, or to ſuch other uſes as his majeſty ſhall direct; and the perſon refuſing ſuch aid and aſſiſtance, ſhall be rendered for ever after incapable of holding any public office of truſt and profit, or of ſuing in any court of juſtice in any of his majeſty's dominions.

OBS. Sect. 1. *In the caſe of the brigantine Providence, ſeized by the collector of the cuſtoms at Rhode Iſland, 18th March, 1767, for breaking bulk, no proceſs could be carried into execution; and the whole conduct of judge, marſhal, governor, and commiſſioners, both in the firſt inſtance and on the appeal to the court of Admiralty here, which ſent over a commiſſion to examine witneſſes, appears to have been a colluſion, and mockery of the Acts of Trade.*

SECT. II.

And whereas many perſons, neceſſary to appear and give evidence in cauſes of ſeizure may withdraw themſelves to a diſtant part of the colony or plantation where ſuch ſeizure may happen to be triable, or into ſome other colony or plantation; *Be it enacted*, That it ſhall and may be lawful for any judge of the admiralty courts, or of any courts of record in the ſaid colonies, to delegate and commiſſion any perſon or perſons to execute any writ, warrant, monition, compulſory, interlocutory order, decree, or ſentence, arreſt or attachment; and to examine any witneſſes reſiding or being in any part of the ſaid colony and plantation; or by letters of requeſt to require and obtain the aid of any other judge or judges of any other court in any other colonies or plantations of his majeſty, for any of the purpoſes aforeſaid.

OBS. Sect. 2. *This is in imitation of the proceſs uſual in the eccleſiaſtical courts.*

SECT.

SECT. III.

Be it further enacted, That all the ſeveral acts done and regiſtered in any of the courts of admiralty in the colonies and plantations, and elſewhere in his majeſty's dominions, ſhall be good and lawful evidence in all other courts of juſtice erected, or which may be erected in the ſaid colonies and plantations, and in his majeſty's dominions elſewhere, in the ſame manner, and to the ſame effect, intents, and purpoſes, as if the ſaid courts of admiralty were courts of record of and by the law of the land.

OBS. Sect. 3. *This is neceſſary to recover the penalties, in any courts of record; otherwiſe the certificate of the ſentence of the admiralty courts would not of itſelf be evidence to thoſe other courts.*

SECT. IV.

And in order to prevent as much as poſſible delays, and the many colluſive proceedings which may be naturally expected on the part of many perſons intereſted in the ſeizure of ſhips and goods, in conſequence of this act, and of other acts of parliament, touching the trade and navigation of his majeſty's colonies and ſubjects, *Be it enacted*, that every libel or information to be brought for penalties and forfeitures in conſequence of this act and other acts as aforeſaid, in any of the courts in his majeſty's colonies and plantations, and elſewhere, having admiralty juriſdiction, or concerning penalties and forfeitures, and the cuſtoms and revenue of his majeſty, ſhall be brought, entered, filed, proſecuted, and proceeded upon, until final deciſion in the laſt reſort, in the name of his majeſty only; and that all proceedings otherwiſe carried on in every inſtance ſhall be null and void.

OBS. Sect. 4. *This is agreeable to the* 12 *of George I. c.* xxviii. *All caſes of ſeizure in the Exchequer are to be carried on in the name of the king's attorney-general.*

SECT. V.

And for the more effectually preventing of ſeizure of ſhips, veſſels, and cargoes being made, by conſent, or clandeſtinely, or by colluſion and connivance by the officers of his majeſty's cuſtoms, or commanders or officers of his majeſty's ſhips of war, *Be it enacted*, That, upon proof of any ſeizure by conſent or clandeſtinely, or by colluſion and connivance, the ſhip and cargo ſo ſeized ſhall be adjudged to be forfeited to his majeſty; one moiety thereof be for his majeſty's uſe, and the other moiety for ſuch perſon or perſons who ſhall diſcover and produce proof

of

of the ſame; and that ſuch officer of his majeſty's cuſtoms or navy, making ſuch fraudulent ſeizure, ſhall be rendered for ever incapable of his majeſty's ſervice, and ſhall forfeit the ſum of one thouſand pounds, to be ſued for in his majeſty's name, and for his majeſty's uſe, in any court of record, by action of debt, bill, plaint, or information, ſuch ſentence of colluſive ſeizure, or by connivance, conſent, or clandeſtinely, being duly certified by the judge of the court in which ſuch ſeizure was tried; and no eſſoign, protection, privilege, or wager of law, or any more than one imparlance ſhall be allowed.

OBS. Sect. 5. *This clauſe correſponds with the clauſe in the prize-act during the late war concerning colluſive captures.*

SECT. VI.

And whereas by an act of the 4th of his preſent majeſty it was enacted*, "That foreign veſſels found at anchor, or "hovering within two leagues of the ſhore of any Britiſh ter- "ritory in America, and not departing withing forty-eigh "hours after the maſter ſhall be required ſo to do by any offi- "cer of his majeſty's cuſtoms, unleſs in caſes of neceſſity "and diſtreſs, *ſuch veſſels*, with the goods, *are to be forfeited*, "and may be ſeized by any officer of the cuſtoms." *Be it enacted*, That ſo much of the ſaid act ſhall be repealed as directs the forfeiture of ſuch ſhip or veſſel. And that it may be lawful for any commander or officer of any of his majeſty's ſhips, in like manner to require the maſter of any foreign ſhip or veſſel found as aforeſaid, to depart; and in caſe of refuſal, to detain ſuch ſhip and veſſel, and to ſeize and take the goods as forfeited to his majeſty: that upon forfeiture of the goods on board ſuch veſſel, upon condemnation finally in manner as aforeſaid, the value of the cargo ſhall be divided, one moiety to his majeſty, and one other moiety to the captors, in ſuch manner and proportions as his majeſty ſhall direct: but that the ſhip or veſſel ſhall be reſtored to the owners, being truly foreign ſubjects, according to treaty, without wilful damage to the ſhip or veſſel, and without injury to the maſter or mariners, in caſe of no reſiſtance. *Provided* always, that in caſe of any foreign ſhip or veſſel bound to his majeſty's colonies, or ſuſpected to be bound thither, by ſuch ſhip or veſſel not being in diſtreſs of weather, being greatly out of her due courſe of ſailing to any of the colonies or plantations of the ſtate to which ſhe belongs, or having arms and amunition or any con-

* OBS. This act is contrary to the treaty of Utrecht with France. Cargo *contraband*, to be condemned. Ship, even going to enemies, to go free. Vide ART. xxvi.

traband goods on board, being met with by any of his majeſty's ſhips, if the maſter of ſuch foreign ſhip or veſſel ſhall *willingly* ſubmit that the ſame ſhall be examined, and he ſhall deliver up bona fide the ſhip's papers and cargo, then, and in that caſe, ſuch ſhip or veſſel ſhall go free, and the maſter of ſuch ſhip or veſſel ſhall be paid by the captor thereof the full freight for the whole voyage, as if the ſame had been completed and ended according to the charter-party.

OBS. Sect. 6. *As moſt ſhips employed in ſuch ſervice are only upon freight, it would be a great inducement to them not only to deliver up their cargoes, but even to put themſelves in the way of our cruiſers, if they are ſure to be paid their whole hire for half or a very ſmall part of their voyage; many would take care, particularly the Dutch, to be ſtopped in the channel, and go back and fetch another cargo to be taken again.*

SECT. VII.

Be it farther enacted, That in caſe the maſter or mariners of any foreign ſhip, *being found in the American ſeas*, at the diſtance of leagues from any coaſt of Europe, ſhall refuſe to produce to any commander or officer of his majeſty's ſhips his paſſport or ſea brief, cocquets, or clearances, in the tenor required by the ſeveral treaties ſubſiſting between his majeſty's crown and foreign maritime powers reſpectively, or ſhall fling over board any box, cheſt, parcel, or packet, or otherwiſe deſtroy or attempt to deſtroy any papers on board the ſaid ſhip; ſuch act of the maſters or mariners ſhall juſtify the commanders of his majeſty's ſhips from any coſts or damages for the having examined, ſeized, and detained ſuch ſhip or veſſel for adjudication.

OBS. Sect. 7. *It is here ſaid for adjudication, but condemnation or not will depend on circumſtances. By treaties all foreign ſhips may be ſtopped, and are to produce every where their paſſports, ſea-briefs, cocquets, clearances, &c. in the forms ſet forth in the treaties, which forms are ſeldom attended to, and the want of that obſervance by neutral ſhips, has been held in time of war a juſtification of the capture; but the right to examine farther foreign ſhips going from Europe, at a certain diſtance from land, being very doubtful and dangerous, yet in many caſes neceſſary to exerciſe, it may be well poſſibly to advertiſe foreign ſtates in this way what they are to expect, and it may be wiſer ſo to do than for us to make requiſitions, or preſent memorials to which they may be diſpoſed to give a rude, or an unſatisfactory anſwer. If they ſhould complain of the act, they had better be the complainants than we of their conduct. And under*

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the ſanction of this act, the Britiſh government may give an eaſy anſwer, that foreign ſubjects had ſufficient public warning; and that if the making of ſuch an act has been wrong, it will require time and national conſideration to repeal it: and ſo at leaſt we may gain ſomething by procraſtination and checking an evil, if we cannot totally ſuppreſs it.

SECT. VIII.

Be it further enacted, That in caſe any foreign or other ſhip or veſſel ſhall be ſeized by any of the commanders of his majeſty's ſhips, it may and ſhall be lawful, if ſuch commander ſhall judge it neceſſary from the circumſtances of the caſe, or the ſtate of the courts of juſtice in the colonies, to ſend ſuch ſhip or veſſel and her cargo to England, together with the Ship's papers, and the maſter and mate, and two or three mariners, in order that the lawful ſeizure thereof may be tried in the high court of admiralty in England in the manner aforeſaid.

OBS. Sect. 8. *This is of apparent neceſſity from the preſent ſtate of the colonies. The mode of proceeding agrees with the Prize Act.*

SECT. IX.

Be it further enacted, That in all caſes of claims upon the ſeizure of Britiſh and foreign ſhips, veſſels, and cargoes, the judge, at the petition of either of the parties, may order the ſhip and cargo, or cargo only, in caſes of foreign ſhips, to be ſold, each party to name a commiſſioner for ſuch ſale, and the money ariſing therefrom to be laid out in the three per cent. annuities of the Bank of England, in the name of the judge and the regiſter, to accumulate for the uſe of the party who ſhall finally obtain in the ſuit.

OBS. Sect. 9. *Agrees with the Prize Act.*

SECT. X.

That the burthen of the proof ſhall reſt with the claimant. That in all caſes in which the judge ſhall pronounce that there was juſt and probable cauſe of ſeizure, no coſts ſhall be given to the claimant againſt the captor.

OBS. Sect. 10. *Agrees with the Prize Act.*

SECT. XI.

That no appeals ſhall be allowed from any ordinary or intermediate acts, but only from a definitive ſentence, or interlocutory decree, having the force of a definitive ſentence.

OBS. Sect. 11. *Neceſſary to prevent great expence and delay, and frivolous appeals.*

SECT. XII.

That all appeals ſhall be interpoſed within fourteen days after ſentence; and that the appellant ſhall give good ſecurity to proſecute the appeal within twelve calendar months, and to pay treble coſts in caſe the ſentence ſhall be affirmed, after the firſt appeal.

OBS. Sect. 12. *The time of appeal agrees with the Prize Act and uſual proceſs of Admiralty. The giving treble coſts is to prevent frivolous appeals to the delegates or privy-council.*

SECT. XIII.

That the courſe of appeal ſhall be from the admiralty courts in America to the high court of admiralty in England, and from thence to his majeſty in his court of delegates or in council, any precedent, or commiſſion by letters patent to any judges of the vice-admiralty courts in America to the contrary notwithſtanding.

OBS. Sect. 13. *This is obſerved upon in p. 7. of the Introduction.*

SECT. XIV.

Be it further enacted, That with reſpect to the ſeizure, detention, or proſecution of Britiſh or foreign ſhips or veſſels, and their cargoes, his majeſty ſhall be, and is hereby declared to be empowered, for the better obſervance of treaties and the public faith, and for maintaining the peace with the ſeveral maritime powers of Europe in alliance with this kingdom, as well as for the better adminiſtration of juſtice to the ſubject who may be aggrieved by any ſeizure without juſt and ſufficient cauſe, to give ſuch orders, directions, and regulations reſpecting the modes of proceeding, and diſtribution of ſhares to his reſpective courts of admiralty, and all other perſons concerned, with the advice of his privy council, as from time to time may be judged neceſſary.

OBS. Sect. 14. *This agrees with the Prize Act.*

SECT. XV.

And whereas all droits of admiralty, treaſure-trove, deodands, eſcheats, prizes, forfeitures of and for things found and done upon the high ſeas, are by law and ancient uſage of this realm veſted and inherent originally in the crown

crown of theſe realms, and from thence are derived to the governors, commanders, and officers of his majeſty, and others by royal grant and gracious favour, or otherwiſe by royal aſſent in parliament; and whereas the power of the exerciſe of lenity and pardon in the crown, in the mitigating or remitting the ſeverity of penal ſtatutes, ought at all times to be inviolably preſerved for the good and liberty of the ſubject; *Be it enacted*, That the law officers of his Majeſty, being thereto authorized by his majeſty's eſpecial warrant and ſign manual, may ſuſpend and ſtay the proſecution of any ſuit for penalties and forfeitures of any Britiſh or foreign ſhip, veſſel, or cargo, or conſent to reſtitution thereof, and the ſame to be reſtored to the owner claiming the ſame accordingly, notwithſtanding the moiety and intereſt of any governor, commander, officer, or officers of his majeſty, derived, or to be derived under this or any other act touching the ſeizure of ſhips and goods for any cauſe whatſoever.

OBS. Sect. 15. *This is meant to be in the nature of a* Noli proſequi, *in the common law courts, and may be a power very neceſſary politically, to enable his majeſty to make reſtitution to a foreign power, or to any one of his own ſubjects, who may be a proper object of tenderneſs. No Britiſh ſubject can object to having his ſhip and goods reſtored to him.*

SECT. XVI.

And whereas it frequently happens that in the hurry of office cocquets are eraſed, and other words are wrote over ſuch eraſures, and that upon account of the eraſures appearing thereon ſhips have been ſeized, and brought to adjudication, to the great diſadvantage of the owners: *Be it enacted*, That no ſhip, veſſel, or cargo ſhall be forfeited, or ſubject to any coſts for the eraſure of any cocquet, unleſs it ſhall appear that ſuch cocquet was *fraudulently* eraſed or altered by any other perſon than the officer of the cuſtoms who wrote and delivered the ſame.

OBS. Sect. 16. *This may be thought unneceſſary; but in the late caſe of the Betſy, the eraſure of a cocquet occaſioned the ſhip to be ſeized, and after a long trial in the high court of Admiralty, between the owners and the captain of the man of war, it was carried to the Delegates.*

SECT. XVII.

And whereas by ſeveral acts of parliament now in force for reſtraining and regulating the trade in the Britiſh colonies and plantations

plantations, *It is enacted*, That it may be lawful for any admiral, chief commander, or commiſſioned officer of his majeſty's fleet or ſhips of war, or any officer of his majeſty's cuſtoms *to ſeize* any ſhip or veſſel arriving at any of the ſaid provinces or colonies, or which ſhall be *diſcovered within two leagues of the ſhore, having ſuch goods as are enumerated on board*, and the goods laden thereon, (except as before excepted) for which the maſter or other perſon taking charge of ſuch ſhip or veſſel, ſhall not produce a cocquet or clearance from the collector or proper officer of his majeſty's cuſtoms, certifying that the ſaid goods were laden on board the ſaid ſhip or veſſel in ſome port of Great Britain; in conſequence of which ſaid acts of parliament, doubts have ariſen of the legality of ſeizing, or attempting to ſeize any ſhip or veſſel, not being within the caſe of the ſaid acts, that is to ſay, not being hovering exactly within the ſaid diſtance as limited, or not having any ſuch goods on board as enumerated; and that in ſuch caſes, the ſeizure, being made at the peril of the ſeizor, may be held to be a treſpaſs and attack, or aſſault, upon the high ſeas, which may juſtify reſiſtance, or may make the ſeizor liable to damages and for demurrage: Therefore *Be it enacted*, That in all caſes whatſoever it may be lawful for any of his majeſty's admirals, or commiſſioned officers of his majeſty's fleet, or any officer of his majeſty's cuſtoms to ſtop, go on board, and ſearch any ſhip or veſſel belonging to Britiſh ſubjects, and to examine the ſhip's books, bills of lading, and cargo, to ſee and learn whether there is any good ground for ſeizure and farther detention, without being liable to any action, ſuit, libel, or other proſecution for the ſtopping, going on board, and ſearching accordingly, although the ſaid ſhip ſhall not be found to have any goods enumerated on board for which there is not a proper clearance, or that the ſaid ſhip or veſſel ſhall be found at a greater diſtance than two leagues from the ſhore.

OBS. Sect. 17. *This ſection has been obſerved upon before, in the Introduction, page* 4.

SECT. XVIII.

And whereas by the ancient uſage of theſe realms, as well as by the ſeveral royal charters and commiſſions in all cauſes of appeal, it hath been the *legal* proceſs in cauſes of a certain value of property, to appeal and proſecute appeals from the deciſions of the ſeverals courts erected in the Britiſh colonies, to the king's majeſty in council; and whereas it hath on certain occaſions been found neceſſary for the better determination of juſtice, according to the law of the realm, to add to the committee of council

council for trade and plantations ſeveral of the judges of his majeſty's court of common law, who have not been members of the privy-council; and doubts having ariſen thereupon concerning the legality of deciſions by perſons not members of the privy-council, an act paſſed in parliament in the twenty-ſecond year of his late majeſty, to enable certain judges of the common law *therein ſpecially named*, although not members of the privy-council, to act notwithſtanding under a certain commiſſion to hear appeals from the Plantations in cauſes of capture of prizes *during the war*, which act expired together with the commiſſion; and whereas it may poſſibly hereafter be thought neceſſary or expedient in many caſes relative to the capture of ſhips and goods coming to or from the ſaid Colonies and Plantations, upon appeals from any court of Admiralty to his majeſty in council, that any particularly named judge or judges of the common law for the time being, or other perſons of good degree and knowledge in the laws, ſhould be inſerted in the commiſſion for the trial of captures of Britiſh or foreign ſhips, going to or coming from the Colonies and Plantations, and in all other cauſes whatſoever of a civil, maritime, or foreign nature, appealed from any courts of juſtice in the ſaid Colonies and Plantations, or from any court of Admiralty, *Be it enacted*, That any judge or judges of the common law, or other perſon or perſons who ſhall be appointed by his majeſty's commiſſion to hear and determine appeals in ſuch caſes, ſhall have power to exerciſe ſuch authority and juriſdiction, although not members of the privy-council.

Obs. Sect. 18. *In caſes of prize of war, under the Prize Act, the commiſſion under the great ſeal was not by the terms of the act limited of neceſſity to privy-counſellors, but was grantable to the commiſſioners generally for hearing appeals in cauſes of prize. But as the treaties in general require, that the reviſion of ſentences complained of ſhall be cauſed to be made by his majeſty in council (as in the 10th Art. with the States General, Dec.* $\frac{1}{11}$, *1674) the commiſſion has generally been granted to a committee of council.*

SECT. XIX.

Laſtly, Whereas caſes of capture of ſhips and cargoes affect very great property; and whereas the condemnation thereof, by the ſtrictneſs of the laws of trade, may ſometimes be too rigorous towards the ſubject, or foreigner, claiming reſtitution thereof, and that proofs may often ariſe newly coming to light, conſidering the great diſtance of the places of trial from one another, and from the port from whence any veſſel may have begun

begun her original voyage, and that the mode of proceeding may have been extremely erroneous for want of judges, advocates, and practitioners in the Colonies, well verſed in the courſe of the civil and maritime laws: *Be it enacted*, that the lord high chancellor, or the keeper of the great ſeal, for the time being, upon ſufficient cauſe ſhown to him by the claimant, may iſſue a ſecond commiſſion as a commiſſion of review, in the ſame manner as in cauſes eccleſiaſtical, to members of his Majeſty's moſt honourable privy-council, or to other fit perſons, although not of the privy-council, jointly with them, or ſeverally, as a new committee of Delegates, to review any ſentence in a ſuit of a civil and maritime, or foreign nature, or touching forfeiture or ſeizure, on petition of the claimant only, and that the cauſe may be heard as a *res integra*, and intirely *de novo*, on new pleas and proofs, according to the ſtyle of the civil law, and according to equity. Provided always, that the petition be preſented within fourteen days after ſentence, and ſecurity be given for treble coſts on the part of the claimant, to be paid in caſe of failure in the cauſe. Any thing to the contrary hereof in the ſtatute of the eighth year of the reign of queen Elizabeth notwithſtanding.

Obs. Sect. 19. *It has been generally held as the modern doctrine, founded upon the above ſtatute, that there are no reviews from ſentences upon appeal to the king, in his high court of delegates, in maritime civil cauſes: and ſo it was determined, upon ſolemn hearing in the Elizabeth, of Stockton, and the Friends Good-will, heard before lord chancellor Harcourt, aſſiſted by the two chief juſtices, Parker and Trevor, and Mr. Juſtice Powel. But it may be ſuſpected that this determination was founded poſſibly upon a ground, that under the circumſtances of thoſe particular caſes there was no reaſon for a review, if thoſe caſes were purely civil, as it muſt be ſuppoſed they were; not that it was out of the lord chancellor's power to grant one in certain caſes of criminal forfeiture or prize. For there are precedents of reviews of appeals from the Admiralty. Lightfoot againſt Lethuillier, 18 July, 1664. Jolly Gueſt and company againſt Clinkard, 2 September, 1668. One caſe was heard a little before, and the other ſoon after the firſt Dutch war. The ſame power to grant a review muſt have been in the crown originally before the ſtatute in maritime as well as in eccleſiaſtical cauſes; and it may be as neceſſary, under certain circumſtances, which may happen, and which want no explanation, that this power ſhould be revived again, as the national policy of having it ſo is apparent.*

FINIS.

ADDITIONAL OBSERVATIONS

AND

PROPOSITIONS.

THE remark made, p. 15 of this book, concerning appeals to the Privy-council from the four vice-admiralty courts in the American continent (the jurisdiction of the admiralty in the islands, and the appeal from them, remaining the same as before), directly to the High Court of Admiralty of England, is an observation confined to the illegality of giving an appeal from the four vice-admiralty courts to the High Court of Admiralty, or to the Privy-bouncil, *optionally*, by virtue of the commission; which option to the Privy-council, is neither supported by the statute of 8 Geo. III. c. xxii. nor by any other act of parliament; and, therefore, by the common law, and usage of the admiralty, the appeal must still lie to the High Court of Admiralty of England only, and from thence to the King in his Court of Delegates, *non obstante* any such commission.

But as to appeals in general from America to the Privy-council, in cases of civil property, it must clearly be understood that no decisive opinion is given here. The common lawyers are the best of judges of that question, how far invariable usage has made it the common law of the colonies from their first existence. In the thirteenth section of the preceding plan this usage is declared to be the common law of the colonies, to obviate the difficulty.

An author, who in other respects generally takes the side of government, in his remarks upon the acts of the thirteenth Parliament of Great Britain, says, that in 1701, when Lord Bellamont was sent out upon a commission to Rhode Island to enquire into irregularities and misdemeanors there, it was rendered ineffectual; and that the province of Connecticut was equally refractory. The governor and superior court peremptorily and publicly declared, that they would admit of no appeals from

them to his Majeſty in Council; which was no more nor leſs than ſaying, that they would admit of no appeals to England. A mode of appeal, the author obſerves to be unconſtitutional, as well as inefficacious, but the only one eſtabliſhed; and without which, the inhabitants of the mother-country would have little chance for juſtice with thoſe of the colonies. Speaking of the impropriety of making the judges there independent of the people, by larger ſalaries, but not independent of the King and governor, the author ſpeaks out: Appeals, ſays he, ſhould have lain from the deciſions of the provincial courts, but not to a court which exerciſes a *uſurped* juriſdiction, to which it is in every light incompetent; not to the King in Council, but to the court of King's Bench in England, p. 421, vol. 1.

There is certainly an eternal difficulty attending the juriſdiction of the Privy-council; the difficulty of putting in execution any of their decrees in the colonies. If they recur to the aid of the courts there, whoſe ſentences have been reverſed by the Privy-council, there may chance to be neither inclination, intereſt, nor power there, to enforce them; and without force what is government but a name? Governments are aſſociations, which may begin by fraud, by violence, or by conſent, and may be carried on by wiſdom or folly, with juſtice or oppreſſion; but all governments muſt end in force. The moment ſubmiſſion ceaſes, the chain is broken, and the ſyſtem of laws diſſolved.

All that is here meant by citing theſe obſervations of the author of the remarks, is to ſhow, that if the juriſdiction of the Privy-council is doubted to be legal in appeals from the colonies in civil cauſes, the doubt is infinitely ſtronger in the caſe of the Privy-council aſſuming a juriſdiction of final appeal, at the option of one of the parties, which appeal under a commiſſion erecting vice-admiralty courts, is not warranted by any act of parliament; ſo that in this point the commiſſions are, as it ſhould ſeem, abſolutely void in law.

The commiſſions of the four vice-admiralty courts, under the ſtatute of 3 Geo. III. cannot be diſmiſſed without obſerving the geographical uncertainty of the lines of juriſdiction. According to theſe commiſſions cauſes are to be tried by the ſeveral juriſdictions, as they are ſeparately deſcribed upon a map of degrees and minutes of latitude; but is it eaſy to tell actually upon the ocean where to draw the line

of

of minutes, and to aſcertain within what juriſdiction a ſhip falls? A man in an elbow-chair, and a great map before him, with his compaſs in his hand, can point out the limits of juriſdiction to a hair's breath. *Let us draw a line*, is become almoſt a univerſal language. To be conciſe, and to be clear, is certainly to be deciſive. Unfortunately there is in theory an affectation of preciſion, which, in public affairs eſpecially, will never hold in practice. The man of mere labour is too apt to be ſyſtematical, and right or wrong, he is never without his rule, although ſometimes it happens to be crooked; but, it is apprehended, that theſe juriſdictions ought not have been limited at all. But all the American admiralty courts, in the iſlands, as well as upon the continent, ſhould have been left concurrent and optional to the captor, who would chuſe to carry his ſhip into the neareſt, or moſt ſafe or convenient port. Neither is there any policy in confining the trial of a ſeizure to the juriſdiction of that very American continent, and port in it, to which the ſhip taken probably belongs, where it may chance to find one of its owners for its judge, or a relation of, or one connected in trade with the claimant, in a country where every perſon on the coaſt, even lawyers, judges, clergymen are commercial. A Philadelphian ſhip might be tried with a fairer chance of condemnation at Halifax than at Philadelphia; or a ſhip belonging to the American continent, might be tried in the iſlands. Where ſeizures of American ſhips are to be tried now, is a queſtion. It is conceived that they can only be tried in the High Court of Admiralty of England.

In regard to ſect. 3. of the foregoing Propoſitions, there is no doubt but a ſentence of any court of admiralty, although not of record, tranſmitted under ſeal of the court, would be good evidence in a court of common law to many intents and purpoſes, but not to all; as in caſes where penalties are laid upon *the perſons* for breaches of an act of parliament; to recover which it may be neceſſary, to prove the fact of colluſion, refuſal of aſſiſtance, &c. over again; for the ſentence of the admiralty court condemning a ſhip for breaches of the acts of trade and navigation, or colluſively captured in that predicament, may be evidence good enough for a purpoſe, ſo as to juſtify a ſale of ſhip and cargo under that ſentence; yet the courts of admiralty and common law being ſeparate, in one of which the ſhip is to be condemned, and in the other a party is perſonally to be proſecuted for a penalty, it is conceived, that the ſentence of the admiralty court alone of itſelf, not being of record by common law, will not ground or

ſupport alone, without other proofs, a perſonal proſecution at common law for penalties, and that they are not recoverable by any civil law proceſs. It will be proper, therefore, for clearneſs, to to amend the third ſection as follows,

Be it further enacted, That all the ſeveral acts done and regiſtered in any of the courts of admiralty in the colonies and plantations, and elſewhere in his Majeſty's dominions, ſhall be good and lawful evidence, and *ſufficient for the recovery of penalties*, inflicted by this act, in all other courts of juſtice erected in the ſaid colonies and plantations, and in his Majeſty's dominions elſewhere, in the ſame manner, and to the ſame effect, intents, and purpoſes, as if the ſaid courts of admiralty were courts of record of, and by the laws of the land.

After all, if the common lawyers have no objection to ſuffer the admiralty courts to exerciſe ſo great a ſhare of juriſdiction in a perſonal caſe, the ſhorteſt proceeding would certainly be for the legiſlature to give a power of levying the penalties of this act to the ſame court which has the juriſdiction of condemnation, in caſes of colluſion, or when its decrees are diſobeyed, or aſſiſtance is refuſed; ſo that the penalty may follow the crime *ipſo facto*, and *inſtanter*, with a power of attachment and impriſonment.

It is impoſſible to leave a ſubject of ſuch importance and extent in its conſequences, without ſaying ſomething of embargoes, and arreſting of ſhips extrajudicially.

In an age of general ſcepticiſm of all moral, religious, and civil government, it is no wonder if mankind are apt to conſider all human rights as equivocal; and, in conſequence of this idea, to hold every action lawful that ſuits their intereſts or their inclinations, and which they can ſupport either by fraud or force, without being puniſhed.

Every queſtion, therefore, is agitated; but if any right of the ſtate is unequivocal in a maritime country, it is the right to lay an embargo on ſhips and ſeamen, and this authority has been invariably exerciſed as a part of the executive power, inherent, and indefeaſible, in the crown of Great Britain. This power is to be exerciſed in time of war, rebellion, or danger; of which danger the chief magiſtrate is, upon his own view, the proper judge, who

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is bound by the law to watch over and maintain the peace of the realm.

The conſequence of an embargo being wilfully broken by any ſubject, is a judicial proſecution and puniſhment for the offence, and the juriſdiction of the admiralty hath always been ſubmitted to.

There are inſtances of the Houſe of Commons having addreſſed the crown to lay an embargo. Embargoes are to be laid ſwiftly and ſpeedily.

The mode of proceeding, however, is as ſlow and aukward as the enemies of this country could wiſh it to be. The order of laying an embargo in all or any of the ports of his majeſty's dominions is firſt in the Privy council. This is directed to the lords of the treaſury, who ſignify it to the commiſſioners of the cuſtoms, and to the board of admiralty, with a clauſe as far as to them by law belongs. In conſequence of theſe ſignifications the officers of the cuſtoms, by the order of the commiſſioners of the cuſtoms, carry the embargo into execution, by putting men on board ſhips in harbour, and any other means of detention. The marſhal of the admiralty lays the embargo in the river as far as Graveſend.

No method could be more effectually thought of, to prevent embargoes being ſecret and rapid in execution, and to enable ſhips and perſons to eſcape, than ſuch a long-tailed ſeries of orders paſſing ſo many public offices, and their clerks.

It may be right therefore *to enact*, that whenever an embargo ſhall be thought neceſſary by his Majeſty in council, to be laid upon any ſhip or ſhips, perſon or perſons, in all or any of the ports of his Majeſty's dominions, any one of his Majeſty's ſecretaries of ſtate may direct, under his hand and ſeal, a warrant, without loſs of time, for that purpoſe, reciting ſuch order of council, and addreſſed to the marſhal of the admiralty and his deputy, to all officers of the cuſtoms and navy, all officers civil and military of the crown, and all magiſtrates whoſoever, and to all other his Majeſty's liege ſubjects, to be executing, aiding, and aſſiſting therein, and that all perſons offending, by refuſing to execute or obey ſuch order of embargo, ſhall be proſecuted at the ſuit of the crown in the High Court of Admiralty, and liable to fine and impriſonment.

Embargoes have commonly been general; but in order to prevent the difficulties arising from any extrajudicial, or general warrant for seizing, or searching, or detaining any particular ship, the true medium through which the executive power might safely pass, and the mode least objectionable to civil liberty and property would be to call in the aid and interposition of a court of justice, as in the case of a warrant from a chief justice of the King's Bench.

It might, therefore, *be enacted*, That upon suggestion of circumstances of piracy, or treasonable papers on board, or of arms and ammunition more than is necessary for common defence, or of destination to any enemy's port, or to persons in arms against his Majesty and the realm, such suggestion being special to the ship and parties, upon oath of some credible person informing thereof, the judge of the High Court of Admiralty for the time being, his surrogate or deputy, may grant a warrant to the marshal of the admiralty, or his deputy, or to any officer of his Majesty's customs or navy, to arrest such ship, and to search for, take, and attach all papers and persons therein concerned, so that such ship and persons may be proceeded against according to law.

It also deserves consideration, that in case of any British subjects landing upon the territory of any foreign prince in alliance with his Majesty, and there doing, without public commission, any sort of violence, it hath not been held to be a case of piracy within the law, and great questions have arisen concerning the punishment thereof; therefore, in order to preserve amity with foreign maritime states, and to do justice universally, it should *be enacted*, That all acts of murder, robbery, or piracy, or other felonious taking away, or committing violence, in parts beyond the seas, upon the land, whether in the dominions of Great Britain, or of any foreign prince or state, shall be deemed to be done upon the high seas, within the jurisdiction of the admiralty of England; and that persons guilty thereof shall suffer punishment accordingly.

Lastly, whereas doubts have been lately started concerning the legality of commissions for the trials in the American islands and colonies for piracies and offences committed upon the high seas, according to the course of the common law by bills of indictment and juries, according to the statute of Henry VIII. which statute is held by some not to extend to the colonies, and persons

ſons have been ſent very lately from the Grenades to be tried here, for that reaſon; although it appears, that ſuch method of proceeding hath by uſage become the common law in the colonies; and farther, that the trial by a jury of twelve mariners, or merchants, was always the proceſs in the court of the Lord High Admiral, by the ancient cuſtom of the realm before the ſtatute, it may be proper to inſert a clauſe extending all ſtatutes relating to piracies, and other crimes committed on the high ſeas, to the colonies, and to the ſeveral places in the Eaſt Indies, in which the Eaſt India Company hath any factories or ſettlements, and to all other his Majeſty's dominions which are or ſhall be.

The firſt part of this book and plan was drawn up and printed to ſave the trouble of copying, and leſſen the difficulty of imparting the contents to the many perſons of conſequence and character, whoſe judgment may be neceſſary to be had in preparing any bill of ſo extenſive and important a nature as this for parliament. Since that time, affairs have taken a face in the colonies ſo rapidly for the worſe, that it ſeems in many articles unneceſſary to regulate thoſe courts of vice-admiralty, which no longer exiſt in fact. Yet in view of ſo happy an event, as that of the American colonies being reſtored to peace and obedience to the laws of the mother country, it may be more politic to regulate ſome of theſe matters now, than to be forced by the neceſſity of affairs to take them up hereafter. Let whatever event may take place, ſome act of legiſlature muſt paſs for the direction of the court of admiralty at home, in caſes of ſeizure of American and foreign ſhips, for infraction of the reſtraining acts of parliament concerning trade and navigation. Otherwiſe the more confuſion there is of rights from their uncertainty, the greater will be the benefit of the chaos to profeſſional men, and danger to this country.

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